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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 9-83

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : ROYAL S. DELLINGER
 Acting Administrator
 for Regional Management

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SUBJECT : P.L. 97-362, Amendments Which Affect Payment
 of UCX Benefits

1. Purpose. To announce amendments made to 5 U.S.C. 8521 which affect entitlement for unemployment compensation for ex-service members (UCX), and to provide implementing instructions.

2. References. Sections 201 and 202 of P.L. 97-362, 5 U.S.C. 8521, P.L. 97-35, 20 CFR 614, UIPL 40-81, and UIPL 23-82.

3. Amendments. Sections 201 and 202 of P.L. 97-362 made significant changes to the UCX program as follows:

"(a) ELIGIBILITY REQUIREMENTS.--Paragraph (1) of Section 8521(a) of title 5, United States Code, is amended to read as follows:

"(1) 'Federal service' means active service (not including active duty in a reserve status unless for a continuous period of 180 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service--

"(A) the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

"(B)(i) the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or

"(ii) the individual was discharged or released before completing such term of active service--

"(I) for the convenience of the Government under an early release program,

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"(II) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

"(III) because of hardship, or

"(IV) because of personality disorders or inaptitude but only if the service was continuous for 365 days or more."

"(b) PERIOD FOR WHICH BENEFITS PAYABLE.--Section 8521 of such title 5 is amended by adding at the end thereof the following new subsection:

"(c)(1) An individual shall not be entitled to compensation under this subchapter for any week before the fifth week beginning after the week in which the individual was discharged or released.

"(2) The aggregate amount of compensation payable on the basis of Federal service (as defined in subsection (a)) to any individual with respect to any benefit year shall not exceed 13 times the individual's weekly benefit amount for total unemployment."

"(d) EFFECTIVE DATE.--

"(1) IN GENERAL - Except as provided in paragraph (2), the amendments made by this section shall apply with respect to terminations of service on or after July 1, 1981, but only for purposes of determining eligibility for benefits for weeks of unemployment beginning after the date of the enactment of this Act.

"(2) TRANSITIONAL RULE.--The amendments made by this section shall not apply to the extent that such amendments would (but for this paragraph) reduce the amount of compensation payable in the case of benefit years established before the date of the enactment of this Act."

Section 202 of P.L. 97-362 amends 5 U.S.C. 8509 to require the Department of Defense to pay UCX benefit costs effective October 1, 1983. Separate instructions will be issued, if needed, to implement this provision.

4. Effective date. The amendments to 5 U.S.C. 8521 apply to individuals separated from the armed forces or commissioned service in the NOAA on or after July 1, 1981, but only in the case of weeks of unemployment beginning after October 25, 1982, the date the Act was enacted.

5. Federal Service

a. Criteria

(1) The amendment changes the criteria for determining Federal service for UCX purposes. To meet these criteria, an ex-service member separated from the military service on or after July 1, 1981, must have completed a full term of active service in the Armed Forces or the commissioned corps of the National Oceanic and Atmospheric Administration and must have been discharged or released under honorable conditions; and, if an officer, the individual must not have resigned for the good of the service.

(2) Ex-service members discharged or released before completing their first full term of active service will nevertheless have a period of Federal service if separated --

(a) for the convenience of the Government under an early release program,

(b) because of medical disqualification, pregnancy, parenthood, or service-incurred injury or disability,

(c) because of hardship, or

(d) because of personality disorder or inaptitude, but only if the service was continuous for 365 days or more.

(3) Continuous active duty in reserve status may be counted in determining if an individual has Federal service, but only if such active duty is continuous for 180 days or longer.

(4) Item 2 of DD Form 214 will show if the individual was a member of the National Guard or Reserve component of the Armed Forces by the following entries for:

Army: ARNGUS or USAR

Air Force: ANGUS or USAFR

Navy: USNR

Marines: USMCR

Coast Guard: USCGR

Note: There is no reserve component for commissioned officers of NOAA.

(5) For separations before July 1, 1981, SESAs shall continue to use the criteria established in 5 U.S.C. 8521, before the present amendments (and the 1981 amendment) to determine Federal service.

(a) The convenience of the Government under an early release program,

(b) Medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(c) Hardship, or

(d) Personality disorders or inaptitude, but only if the service was continuous for 365 days or more.

(2) The above information may appear in items 12, 18, 23, 25, or 28 of DD Form 214. If so, such active service may be accepted in lieu of "first full term" of active service. However, if such information is not clearly shown on the DD Form 214, the SESA should use the Form ETA 8-43 to verify such information, with the appropriate branch of the service.

(3) In the case of a NOAA claimant, if the SESA can not clearly make a UCX determination based on information shown on NOAA Form 56-16, ETA 8-43 should be used to obtain whatever additional information is needed, as indicated above in item 5b.

(4) To determine Federal military service under P.L. 97-362, SESAs will not use the separation program designators listed by UIPL 23-82, for individuals separated on or after July 1, 1981.

d. Period of service and character of discharge. An individual's period of active service and character of discharge are listed on the DD 214 as follows:

(1) Item 12 of DD Form 214 shows the number of days of service.

(2) Item 24 of DD Form 214 shows the character of discharge, which must be either "Honorable" or "Under Honorable Conditions." For individuals separated on and after October 1, 1982, if their respective periods of service are less than 180 days, the armed forces have been directed by the Department of Defense to enter "Entry Level Separation" in item 24 of DD Form 214. This entry will mean that the individual's character of discharge was "Under Honorable Conditions." (For types of discharges, refer to Section 3 of Chapter XIII of UCX Handbook.)

e. Lost or Missing DD 214. When an individual applies for UCX benefits, the SESA will ask the claimant to present Copy 4 of his/her DD Form 214. If the claimant alleges that he/she was not issued or has lost Copy 4 of the DD Form 214, the SESA will advise such claimant that he or she is responsible for obtaining the DD Form 214, according to Section 6 of Chapter II of UCX Handbook.

6. Eligibility Requirements

a. Monetary award. 5 U.S.C. 8521 (c)(2) provides that the aggregate amount of compensation payable based on Federal service to any individual for any benefit year shall not exceed 13 times the individual's weekly benefit amount (13 x WBA) for total unemployment.

The total amount of compensation payable for all benefit years established after separation from service shall not exceed 13 times the WBA. This limitation precludes an individual from establishing monetary entitlement based on lag quarter Federal wages for a subsequent benefit year if the individual's entitlement to compensation payable equalled 13 times the WBA for the first benefit year including EB and FSC. Compensation does not have to be paid to be considered payable.

The same aggregate limitation (13 x WBA) is extended to EB or FSC claims based on the regular UCX claim. Therefore, an individual is not eligible for more than an aggregate amount of 13 x WBA, which includes all compensable weeks payable since the beginning of the benefit year including payment of EB or FSC benefits.

b. Period of Eligibility. An individual is not entitled to UCX benefits or credit for a waiting period for any week, as defined by State law for the payment of benefits, before the fifth week beginning after the week in which the individual was discharged or released from service.

c. Establishing Benefit Years Before Date of Enactment.

The law limits payment of benefits to weeks beginning after enactment. However, it specifically excludes ex-service members currently receiving benefits from having their benefits reduced by the amendments. Therefore, any UCX claimant having a benefit year beginning before October 25, 1982, shall not have benefits payable in that benefit year reduced because of the amendments.

While the law and conference report are silent on the issue of backdating UCX claims, any request for backdating shall be determined under the unemployment insurance law of the State to which the military service and wages are assigned.

7. Joint Claims

a. When a claimant files a UCX joint claim effective for weeks of unemployment after October 25, 1982, the SESA shall, after the payment of 13 times the claimant's weekly benefit amount, issue a monetary redetermination removing the claimant's UCX base period wages. If the claimant remains monetarily eligible based on other wages, benefits are payable as redetermined during the rest of the benefit year.

b. When a claimant files a UCX joint claim effective for weeks of unemployment after October 25, 1982, the SESA shall establish monetary eligibility based on other than UCX wage credits, if the individual is separately eligible and files before the fifth week beginning after the week the individual was discharged or released from service. On and after such fifth week, the SESA shall make a redetermination to include UCX base period wages.

c. When a claimant, whose service terminated on or after July 1, 1981, establishes a benefit year that began before October 25, 1982, and the claimant's military service was excluded because it did not meet the criteria for determining Federal service, the SESA will make a monetary redetermination to include UCX base period wages, if such wages meet the criteria of Federal service under P.L. 97-362. The monetary redetermination applies to compensable weeks that begin after October 25, 1982, during the rest of the benefit year. After 13 weeks of such benefits, the SESA will follow the instructions in item 7a above. For the first 5 weeks after separation from service, item 7b is applicable.

8. Publicize Information. SESAs should ensure that the above information which pertains to ex-service members separated on and after July 1, 1981, is publicized statewide and at the local office level.

9. Action Required. Administrators should provide the above information to all appropriate staff and ensure that they follow above instructions on UCX claimants separated from the service after July 1, 1981.

10. Inquiries. Direct inquiries to appropriate regional office.